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In re Application of
Bernard ANDREAS ET AL
Application No. 10/814,593
Filed: March 30, 2004
Attorney Docket No. 021629-002500US

OFFICE OF PETITIONS

RESPONSE TO PETITION

This is a response to the petition under 37 CFR 1.59(b), filed February 10, 2009, to expunge information from the above identified application.

The petition is dismissed.

The petition does not clearly identify the information requested to be expunged. A review of the file indicates that several papers were filed on February 10, 2009. The request is not directed to a specific document.

The petition does not contain a clear statement that the information requested to be expunged was unintentionally submitted and failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted. A review of the papers submitted February 10, 2009, indicate that the papers are in response to the office action dated January 13, 2009.

The petition does not contain a commitment on the part of petitioner to retain the information to be expunged for the period of any patent with regard to which such information is submitted.

However, the petition is premature since prosecution of the application has not been closed by way of the allowance of the application, the mailing of an Ex parte Quayle action, or the abandonment of the application. See MPEP 724.06. Accordingly, it is not appropriate to make a final determination of whether or not the material requested to be expunged is "material," with "materiality" being defined as any information which the examiner considers as being important to a determination of patentability of the claims. Thus, the decision on the petition to expunge must be dismissed at this time.

During prosecution on the merits, the examiner will determine whether or not the identified document is considered to be "material." If the information is not considered by the examiner to be material and the conditions related to the expungement of unintentionally submitted

information, discussed as A-F in MPEP 724.05 II, are satisfied, the information will be removed from the official file.

After the mailing of a Notice of Allowance, an Ex parte Quayle action or a Notice of Abandonment, the petition to expunge may be renewed by applicant(s) or applicant(s)' representative. No further fee is required for such a second submission of a petition under 37 CFR 1.59 to expunge information. **In addition, the requester is cautioned to renew the petition under 37 CFR 1.59 for reconsideration by the Office prior to the point at which the present file, or file claiming priority to the present file, is forwarded for issuance of the patent.** This is to be done no later than immediately after the examiner has issued a Notice of Allowance, an Ex parte Quayle action or a Notice of Abandonment. A failure to timely renew the petition to expunge prior to the point at which the file is forwarded for issuance will result in the material being retained in the patented file and thus becoming open to the public.

Telephone inquiries concerning this communication should be directed to the undersigned at 571-272-0602.



Thurman K. Page
Petitions Examiner
Office of Petitions